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# Supreme Court of the United States.

No. 884.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS,
*Plaintiff-in-Error,*

*against*

HENRIETTA MEYER,
*Defendant-in-Error.*

# BRIEF OF DEFENDANT-IN-ERROR.


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*Of Counsel for Defendant-in-Error.*



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IN THE

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THE SUPREME LODGE, KNIGHTS OF PYTHIAS,
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against

HENRIETTA MEYER,
Defendant-in-Error.

No. 234.

## Brief of Defendant-in-Error.

This is an appeal by the plaintiff-in-error from a judgment rendered in favor of the defendant-in-error, Henrietta Meyer, and against the plaintiff-in-error, Supreme Lodge, Knights of Pythias in the Supreme Court of the State of New York, held in and for the County of Queens, and entered on the 21st day of March, 1904, which judgment was entered upon a remittitur of the Court of Appeals of the State of New York.

## Statement of the Case.

The defendant-in-error brought this action as the beneficiary of a policy issued to her husband, Emanuel Meyer, deceased, by the plaintiff-in-error, the Supreme Lodge, Knights of Pythias,

The plaintiff-in-error is a fraternal mutual benefit corporation, having subordinate local branches (Record, page 4), and issues policies of insurance upon the lives of those of its members who belong to what is known as the "Endowment Rank," which is a subordinate branch of the Supreme Lodge, Knights of Pythias (Record, page 8).

The assured, Emanuel Meyer, at the time of his death, belonged to said Endowment Rank. The Supreme Lodge, Knights of Pythias had issued a policy to said Emanuel Meyer, by which it promised to pay to his wife, Henrietta Meyer, the sum of Two thousand dollars, upon his death (Record, 5).

The policy in this case was issued upon the written application of Emanuel Meyer, dated September 6th, 1894 (Record, 34).

At the time of the issuance of the policy Emanuel Meyer was a member of Independence Lodge, No. 361, Knights of Pythias, of the Grand Jurisdiction of the State of New York (Record, 34). The application was made in the City of New York (Record, p. 36, and Defendant' Answer Record, 7).

The application contained the following provision:

> "It is agreed that membership shall not begin and the certificate of membership issued under this contract shall not be binding or in force and effect until this application has been accepted by the Board of Control and all

required fees and the first monthly payment has been paid to said board."

(Record, 35.)

The application for the policy also contained the following provision:

"I hereby, for myself, my heirs, assigns, representatives and beneficiaries expressly waive any and all provisions of law, now or hereafter in force, prohibiting or excusing any physician heretofore or hereafter attending me professionally or otherwise from disclosing or testifying to any information acquired thereby, or making any such physician incompetent as a witness, and hereby consent that any such physician may testify to and disclose any information so derived or received in any suit or proceeding wherein the same may be material (Record, p. 35)."

The policy was dated September 20th, 1894, at Chicago, Illinois.

(Record, 6.)

The policy contained the following endorsement:

"I hereby accept this certificate of membership subject to all the conditions therein contained."

"Signature of member, Emanuel Meyer. Dated at New York this 28th day of September, 1894.

Attest: Louis Riegel. *Secretary section 2179.*"

This acceptance of the policy on September 28th, 1894, was the last act that was done in connection therewith.

On the 29th day of September, 1900, Emanuel Meyer died in the City of Buffalo, State of New

York. At the time of his death he was a member in good standing of the plaintiff-in-error (Record, 7).

During his last illness Meyer was attended by three physicians. The testimony of these physicians was taken by commission and their depositions are set forth at length in the record.

## Trial.

Under the pleadings and the admissions by the defendant, the only question at issue was:

DID THE DECEASED COMMIT SUICIDE?

(Record, 11.)

At the trial of the case the defendant, the plaintiff-in-error in this court, asked for and obtained the affirmative on the ground that it admitted that all the conditions precedent had been complied with by the plaintiff (Record, 14, 31).

The defendant offered in evidence the testimony of certain physicians who had attended Emanuel Meyer, the assured, at the time of his death, and tried to prove by these witnesses that said Meyer had committed suicide (Record, 14).

This testimony was objected to on the ground that it was privileged, being information obtained by the physician while he was attending the deceased in a professional capacity (Record, 14). The testimony was excluded under Sections 834 and 836 of the Code of Civil Procedure of the State of New York, and the defendant excepted.

## Issues.

The sole issue in this case upon this appeal is, did the exclusion of such evidence upon the trial of this action pursuant to a statute of the State of New York, which prohibited such testimony impair the obligation of a contract?

The plaintiff-in-error contends that the statute of the State of New York which prohibits such evidence impairs the obligation of a contract, and, therefore, comes within the non-impairment clause of the Constitution.

## POINT I.

### The contract in question was executed in the State of New York and subsequent to the enactment of the statute of that State, which, it is claimed, impairs the obligation of the contract in question.

Upon the trial of this case in the court below the evidence of certain physicians, who were produced as witnesses by the plaintiff-in-error, was excluded under Sections 834 and 836 of the Code of Civil Procedure of the State of New York.

These sections in the form in which they stood at the time the policy was executed were as follows:

> Section 834: "A person, duly authorized to practice physic or surgery shall not be allowed to disclose any information which he acquired in attending a patient, in a professional capacity, and which was necessary to enable him to act in that capacity."

Section 836, insofar as it is applicable, is as follows:

> *"The last three sections apply to any examination of a person as a witness unless the provisions thereof are expressly waived upon the trial or examination by the person confessing, the patient or the client. But a physician or surgeon may upon a trial or examination disclose any information as to the mental or physical condition of a patient who is diseased, which he acquired in attending such patients professionally, except confidential communications and such facts as would tend to disgrace the memory of the patient, when the provisions of Section Eight hundred and thirty four have been expressly waived on such trial or examination by the personal representatives of the deceased patient."*

Section 836, the statute with the construction of which we are now concerned, was enacted as above by Chapter 295 of the Laws of 1893 of the State of New York.

These sections as above set forth were construed by the Court of Appeals of that State in the case of Holden vs. Metropolitan Insurance Company, 165 N. Y., 13.

That case finally settled the law in the State of New York, as to the application of these sections.

In that case the policy of insurance sued upon contained an express waiver of the prohibition given by Section 834 of the Code of Civil Procedure similar to the one contained in the contract sued upon in this case and the defendant insisted that under the provision of Section 836 of the Code of Civil Procedure that waiver was effective. The court, construing the statute as it now stands and as it existed at the time the policy in the

present case was made by the plaintiff in error, said as follows:

> "The statute as it now stands, in positive and express terms, requires the waiver to be made upon or at the time of the trial or examination. Under the statute as amended, no one except the personal representatives of the deceased patient can waive the provisions of Section 834, and it can be waived by them only upon the trial or examination where the evidence is offered or received. The apparent purpose of that amendment was to protect parties, their representatives and successors from waivers which should be inadvertently or improperly obtained previously to the trial of an action or examination of the witness. That in many cases injustice had resulted from such waivers having been previously obtained by a species of fraud or duress, was doubtless the reason which induced the Legislature to adopt this amendment, requiring the waiver to be made in the presence and under the supervision of the court before which the trial or examination was had. Whatever the purpose may have been, the plain effect of this statute was to limit as to the time and place when and where such waiver should be made to be effective in exempting the testimony of such a witness from the inhibition of Section 834. The waiver relied upon by the defendant was made in 1893, while the statute, as amended, was in full force and effect. Hence, it is obvious that the waiver in the application was insufficient under the statute as it then stood to justify the admission of the evidence of Dr. Sweetman, and the court erred in overruling the plaintiff's objections and admitting that proof. These rulings were clearly erroneous and constituted substantial errors for which the judgment herein must be reversed."

The policy in this case was signed by the officers of the plaintiff-in error at Chicago, Illinois, on the 20th day of September, 1894 (Record, 33), and was accepted by Emanuel Meyer, the assured, on the 28th day of September, 1894, at New York (Record, 33). The application for the policy contained the following provision:

> "I hereby, for myself, my heirs, assigns, representatives and beneficiaries expressly waive any and all provisions of law, now or hereafter in force, prohibiting or excusing any physician heretofore or hereafter attending me professionally or otherwise, from disclosing or testifying to any information acquired thereby; and hereby consent that any such physician may testify to and disclose any information so derived or received in any suit or proceeding wherein the same may be material."

The plaintiff-in-error now contends that the prohibition contained in Sections 834 and 836 of the New York Code of Civil Procedure, in view of the above clause contained in the application, impaired the obligation of that contract (Brief of plaintiff-in-error).

If the contract in question was a New York contract, then there can, of course, be no question that the statute which was enacted in 1893 could not impair the obligation of a contract which was not made until 1894.

Lehigh vs. Easton, 121 U. S., 388.

The highest court of the State of New York has found that the contract in question was made in New York.

Opinion of the Court of Appeals in this case

(Record, 51) where the court speaking by Mr. Justice GRAY said:

> "With respect to the first of these questions raised by the appellant, whatever other answers might be made to the applicability of the provision of the Federal Constitution relied upon, it is sufficient to say, now, that this contract was consummated in the State of New York and is to be governed, in its enforcement, by the laws of that state. The beneficiary was a resident of this state and there made his application for the insurance. The certificate, issuing upon the application, appears, from its language only, to have been signed by the officers of the defendant at Chicago, in the State of Illinois, on September 20th, 1894; but upon it was printed the following clause: 'I hereby accept this certificate of membership subject to all the conditions therein contained,' and that had the signature of the applicant followed by the words 'Dated at New York, this 28th day of September, 1894, attest: Louis Riegel, secretary section 2179, Endowment Rank, K. of P.' By the terms of the certificate, the agreement of the defendant was subject, not only to the conditions subscribed to by the member in his application, but 'to the further conditions and agreements hereinafter namely,' and the clause containing his acceptance, above quoted, was one of those 'further agreements.' From these terms of the agreements of the parties the only natural conclusion is that the place of the contract was where it was intended, and understood, to be consummated. Its completion depended upon the execution by the member of the further agreement indorsed upon the certificate, namely, to accept it 'subject to all the conditions therein contained.' The contract was not completed, in the sense that it was binding upon either party to it, until it was delivered in

> New York after the execution by the member of the further agreement expressing his unqualified acceptance of its conditions. As a matter of fact, the promise of the defendant was to pay the insurance moneys to the plaintiff, who resided in New York; a feature giving additional local coloring to the contract. But the sufficient and controlling fact is that, by its terms it was first to take effect as a binding obligation, when the required agreement on the part of the member was executed by him."

This finding of fact of the highest court of the State of New York upon this question we submit, is conclusive upon this court.

> Western Union Tel. Co. vs. Gottlieb, 190 U. S., 412.422.
> Dowe vs. Richards, 151 U. S., 658.

The policy fully bears out the construction placed upon it by the Court of Appeals.

The policy was signed by the officers of the Knights of Pythias at Chicago, Illinois, on the 20th day of September, 1894 (Record, 33).

*The policy was accepted by Emanuel Meyer, the assured, on September 28th, 1894, in New York City* (Record, 33).

The acceptance endorsed on the policy is as follows:

> "I hereby accept this certificate of membership subject to all the conditions therein contained.
> Signature of member: Emanuel Meyer. (seal) Dated at New York, this 28th day of September, 1894.
> Attest: Louis Riegel,
> Sec'y Section No. 2179, Endowment Rank, K. of P."

It is therefore apparent from the record that the last act in connection with this contract was performed at New York.

Moreover, the policy was not to become effective until the first premium thereon had been paid.

The application signed by the assured contained the following provision:

> ' It is agreed that membership shall not begin and the certificate of membership issued under this contract shall not be binding or in force and effect until this application has been accepted by the board of control, and all required fees and the first monthly payment has been paid to said board" (Record, 35).

As the premium was to be paid in New York, where the assured resided, therefore, the place of payment is the place of contract.

As said by this court in Equitable Life Assur. Soc. vs. Clements, 140 U. S., 226:

> Where the question arose whether the contract was made in New York or Missouri. This court found upon that question that nothing appeared in the record as to the place of execution except the policy and application, the petition and answer, whereby it appeared that the assured was a resident of Missouri and the application for the policy was signed in Missouri. The policy was executed at the defendant's office in New York, and provided that the contract between the parties should consist of the policy and the application therefor taken together.

The application declared that the contract

> "shall not take effect until the first premium shall have been actually paid during the life of the person herein proposed for assurance."

The petition alleged that that premium and two annual premiums were paid in Missouri, and that the policy was delivered in Missouri, which was not denied by the answer.

Upon this state of facts this court held:

> "The conclusion is inevitable that the policy never become a completed contract, binding either party to it, until the delivery of the policy and the payment of the first premium in Missouri, and consequently that the policy is a Missouri contract and governed by the laws of Missouri."

This is also the law of the State of New York. In Russell vs. Prudential Life Ins. Co., 176 N. Y., 178, the Court of Appeals of New York held that where a policy of insurance contains a clause that it shall not take effect until the first premium is paid in full, the legal effect is that the policy is not binding until the payment of such premium. To the same effect is

> Millard vs. Brayton, 177 Mass., 533.

As to the place of performance of the contract the policy provides as follows:

> "The Board of Control of the Endowment Rank, Knights of Pythias, of the World, will pay to Hattie Meyer, his wife, the sum of $2,000" (fol. 49).

As Hattie Meyer, the wife of the assured, resided in New York (Record, 34) the place of performance necessarily was New York.

The place of performance is ordinarily deemed the situs of an insurance contract.

> Bottomley vs. Met. Life Ins. Co., 170 Mass., 274.

Assuming, therefore, that the policy sued upon was a New York contract, then there can be no question in this case of the impairment of the obligation of a contract.

If, as the plaintiff-in-error now contends, the contract was not executed in New York, then the plaintiff-in-error, upon the trial below having demanded and obtained the affirmative, assumed the burden of proving that fact the same as any other fact constituting its defense.

Lake Ontario Bank vs. Judson, 122 N.Y., 278.

The record also shows that the dues and premiums were paid in New York, a certificate to that effect being made in New York by a person designated as "Master of Finance."

(Record, 41.)

This certificate is as follows:

"State of New York, }
County of New York, } ss.:

Benjamin Hart, being duly sworn, says that he is the Master of Finance of Shakespeare Lodge No. 274, located at grand domain of and that Bro. Emanuel Meyer of said lodge who died on 29th Sept., 1900, was at the time of his death a member in good standing and that his dues were paid to December, 1900.

Benjamin Hart,
Master of Finance."

## POINT II.

**As the contract sued upon in this case was made subsequent to the enactment of the statute in question the non-impairment clause of the constitution has no application.**

The contract in this case was made on September 28th, 1894 (Record, 33). The statute as construed by the court in this case was enacted prior to that time.

> Code of Civil Procedure of the State of New York, Sections 834 and 836.

These sections as they stood at the time of the making of the present contract were construed in the case of

> Holden vs. Metropolitan Life Ins. Co., 165 N. Y., 13.

Therefore, the policy sued upon in this case was made after the enactment of the statute in question.

The non-impairment clause of the Constitution prohibits a State from enacting a law which will impair the obligation of an existing contract. This clause was not intended to prohibit a State from enacting a law prohibiting certain contracts in the future. It was intended as a protection to existing contracts only.

Statutes in existence at the time a contract is made are not void as impairing the obligation of a contract.

> Denney vs. Bennett, 128 U. S., 489.

Such a statute cannot be held to impair the obligation of a contract.

Brown vs. Smart, 145 U. S., 454.

A law in force at the time of making a contract does not impair its obligation.

Ohio, etc., vs. McClure, 10 Wall., 511.
Churchman vs. Martin, 54 Ind., 380.
People's Savings Bank vs. Tripp, 13 R. I., 621.

In the case of

Lehigh Water Co. vs. Easton, 121 U. S., 388,

this court said:

> "The only question presented by the record which this court can properly consider is whether the judgment below denies to the plaintiff-in-error any right or privilege secured by that provision of the Constitution of the United States which declares that, 'No State shall pass any law impairing the obligation of contracts.' Obviously, this clause cannot be invoked for the reversal of the judgment below. It is equally clear that the law of the State to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired. Neither the Lehigh Water Company nor its predecessors had, under any statute enacted prior to 1874, an exclusive right to maintain water works in the Borough of Easton for supplying its inhabitants with water. Nor did the grant to the Borough in the Acts of 1867, of the power to construct and maintain a system of public water works, infringe any right or privilege

> which the plaintiff-in error then had under its charter. But the claim is that the exclusive privilege acquired by the company under the Statute of 1874 was impaired in value by the Acts passed in 1867. It cannot, however, with propriety be said that the obligation of a contract made with the State in 1874 was impaired by statutes enacted in 1867. Whether the former repealed by implication the acts of 1867 presents no question arising under the National Constitution. That is a question simply of statutory construction, which the State court was competent to determine, and whose judgment in respect thereto is not subject to re-examination in this court."

Therefore, whether the contract was made in the State of New York, or was made in the State of Illinois, in neither case has the non-impairment clause any application.

## POINT III.

### Assuming that the contract was made in Illinois upon an action brought in this State, the rules of evidence of the forum in which the action is brought govern.

The *Lex Fori* governs in all matters relating to the remedy and the course of procedure.

> Northern Pacific R. R. Co. vs. Babcock, 154 U. S., 190.

It has frequently been held that all matters respecting the remedy, such as bringing suits, ad-

missibility of evidence, etc., depend upon the law of the State where the suit is brought.

Miller vs. Brenham, 68 N. Y., 82.
Scudder vs. Union National Bank, 1 Otto, 406.
Clarke vs. Lake Shore T. T. Co., 94 N. Y., 218.
Sturgess vs. Vanderbilt, 73 N. Y., 384.

The rules of evidence adopted by the Legislature of the State of New York govern in a case of this kind, particularly is this true when the rule has been adopted as a matter of public policy. The courts of the State of New York need not enforce the laws of another State, which are contrary to the public policy of the State of New York.

When the defendant came into New York to do business it subjected itself to the laws of that State, which were made for the protection of the citizens thereof. Courts of the State of New York have declared that the section in question was passed as a matter of public policy.

As said in the case of Davis vs. Supreme Lodge, Knights of Honor, 165 N. Y., 159–163, the disclosure by a physician whether voluntary or involuntary of the secrets acquired by him while attending upon a patient in his professional capacity naturally shocks our sense of decency and propriety, and this is one reason why the law forbids it.

In the case of Holden vs. Metropolitan Life Insurance Company, 165 N. Y., 13, 17, the court said:

> "The apparent purpose of the amendment was to protect parties, their representatives

and successors from waivers which should be inadvertently or improperly obtained previously to the trial of an action or examination of the witness. That in many cases had resulted from such waivers having been previously obtained by a species of fraud or duress, was doubtless the reason which induced the Legislature to adopt the amendment."

Hoyt vs. Hoyt, 112 N. Y., 493.

The privilege is founded on public policy and in all cases where it applies, the seal of the law must forever remain until it is removed by an act or consent of the patient.

Weston vs. Insurance Co., 99 N. Y., 56.

At common law a penitential confession made to the minister of a person's own church or even a secret confided to a Roman Catholic priest in the course of confession was not regarded as a privileged communication.

Taylor on Evidence, Section 917.

By Section 833 of the Code of Civil Procedure of the State of New York, a minister is not allowed to disclose any confession made to him in his professional character.

According to the contention of the defendant in a case such as the present, a Catholic priest would be compelled to disclose the secrets of the confessional if such sacred confidences were admissible by the laws of Illinois. Upon a suit brought in the Courts of the State of New York,

notwithstanding the express statutory prohibition of the laws of that State.

> "It is universally admitted and established that the forms of remedies and the modes of proceeding and the execution of judgments are to be regulated solely and exclusively by the laws of the place where the action is instituted."
>
> Story Conf. of Laws, 7th Ed., Sec. 556.
>
> "The forms of remedies and the order of judicial proceeding are to be according to the law of the place where the action is instituted without any regard to the domicile of the parties."
>
> *Ibid*, Sec. 558.

The rules of evidence applied in a case are part of the law of the forum.

> Wilcox vs. Hunt, 13 Peters, 378.
> Pritchard vs. Norton, 106 U. S., 124.
>
> "The general principle adopted by civilized nations is that the nature, validity and interpretation of contracts are to be governed by the laws of the country where the contracts are made, or are to be performed, but the remedies are to be governed by the laws of the country where suit is brought."
>
> The Bank of the U. S. vs. Donnally, 8 Peters, 361.

## POINT IV.

### The non-impairment clause of the Constitution has not the slightest application to this case.

Assuming, that the policy in question was executed in the State of Illinois, and that its interpretation is to be governed by the laws of that State; and assuming further that according to the laws of that State the testimony of a physician as to information he had received while attending a patient in a professional capacity was admissible; and assuming further that the courts of New York have erred in refusing to admit the testimony of the physician; still no federal question would be involved.

This court is not here for the purpose of reviewing errors committed by State Courts.

> Lehigh Water Co. vs. Easton, 121 U. S., 388.

The Constitution prohibits a state from passing any law impairing the obligation of a contract; but when a law enacted prior to the making of a contract is invoked to nullify a provision of that contract, then the impairment clause has no application. The State Court has a right to enforce its own laws when passing upon a contract brought before it for adjudication. The State Court is under no obligation to enforce the Laws of another State; it does so only in a spirit of comity and not because of any Constitutional sanction.

The constitutional provision in question contains an inhibition, not a mandate. It prohibits a State fron enacting a law which shall impair the

obligation of a contract. It contains no provision requiring a State to do anything. It is not like the provision which requires a State to give full force and effect to the judgment of a sister State.

The constitutional provision under consideration does not require a State to give full force and effect to a contract executed in another State. The courts of a State may refuse to enforce a contract executed in another State and still no federal question would be involved. So long as the State passes no law affecting the obligation of a contract, the constitutional provision prohibiting the impairment of the obligation of a contract is not violated, and no ground for federal interference is shown.

Comity requires the Courts of the State of New York to interpret a contract made in Illinois according to the Laws of that State. But if the Courts of the State of New York radically err in so doing, or even if they refuse to interpret an Illinois contract according to the Laws of that State, yet the judgment would not be reviewable by this court.

Lehigh vs. Easton, 121 U. S., 388.

A judgment of a State Court cannot be reviewed because it refuses to give effect to a valid contract, or because the judgment impairs the obligation of a contract. It must be a Statute of a State which impairs the obligation of a contract.

Knox vs. Exchange Bank, 79 U. S., 379.

## POINT V.

**The judgment appealed from should be affirmed.**

OTTO H. DROEGE,
J. LAWRENCE FRIEDMANN,
Of Counsel for Defendant-in-Error.

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